

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MICHAEL W. WATKINS,

Plaintiff,

v.

WILLIAM WESTIN, et al.,

Defendants.

Case No. 1:21-cv-01348-NONE-SAB

ORDER GRANTING UNOPPOSED
MOTION FOR LEAVE TO FILE AMENDED
COMPLAINT

(ECF Nos. 25, 26, 27)

Michael Watkins (“Plaintiff”), proceeding in this matter *pro se*, initiated this action on April 30, 2021, in the United States District Court for the Eastern District of Tennessee in Knoxville. (ECF No. 1.) On July 28, 2021, Defendants William Westin, Edward Miliam and Joe Banuelos moved to dismiss for lack of personal jurisdiction and improper venue pursuant to Federal Rules of Civil Procedure 12(b)(2) and (3). (ECF No. 11.) On August 26, 2021, the Tennessee Court granted Defendants’ motion and the case was subsequently transferred to the Eastern District of California on September 9, 2021. (ECF Nos. 14, 15, 16.)

On September 29, 2021, Plaintiff filed a “first amended complaint.” (ECF No. 25.) The amended complaint seeks to add Maryann Watkins, also proceeding *pro se*, as a Plaintiff, and the State of California as a Defendant. The caption of the filing indicates it is an amended complaint

1 filed “as a matter of course” pursuant to Federal Rule of Civil Procedure 15. (Id. at 1.)¹ On
 2 October 8, 2021, noting the time to file an amended complaint “as a matter of course” under Rule
 3 15(a)(1) had expired,² the Court construed the filing as a motion for leave to amend, and ordered
 4 Defendants to file a response to the September 29, 2021 filing within seven (7) days. (ECF No.
 5 26.)

6 On October 11, 2021, Defendants William Westin, Edward Miliam and Joe Banuelos filed
 7 a motion to dismiss the first amended complaint. (ECF No. 27.) The filing indicates that as for a
 8 response to the Court’s October 8, 2021 order, “Defendants do not oppose the filing of Mr.
 9 Watkin’s First Amended Complaint because it does not cure any of the deficiencies, which are
 10 raised through the instant Motion to Dismiss, contained in the original complaint.” (ECF No. 27
 11 at 9 n.1.) The filing acknowledges that the first amended complaint contains a new plaintiff and a
 12 new defendant, however notes “[a]t the time of preparing the instant motion, newly added
 13 Plaintiff Maryann Watkins has not personally served her summons and complaint upon
 14 defendants, and Plaintiff Michael W. Watkins has not served newly named defendant “State of
 15 California.” (ECF No. 27 at 11.) The filing again reiterates that Defendants do not object to the
 16 first amended complaint being deemed the operative pleading in this action as the motion to
 17 dismiss is applicable to either the original complaint or first amended complaint. (ECF No. 27 at
 18 11 n.2.) As such, the Court accepts the filing as both a statement of non-opposition to Plaintiff’s
 19 motion to amend, and a motion to dismiss the amended complaint.

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22 ¹ Rule 15 provides that a party may amend the party’s pleading once as a matter of course within twenty-one days of
 23 serving it or within twenty-one days after service of a responsive pleading or twenty-one days after service of a
 24 motion under Rule 12(b), (e), or (f), whichever is earlier. Fed. R. Civ. P. 15(a)(1). Otherwise, a party may amend
 only by leave of the court or by written consent of the adverse party, and leave shall be freely given when justice so
 requires. Fed. R. Civ. P. 15(a)(2).

25 ² In this action, Defendants filed a motion to dismiss on July 28, 2021. (ECF No. 11.) The proof of service indicates
 26 the motion was served on Plaintiff the same day. (ECF No. 11-1 at 3.) Therefore, Plaintiff was permitted to amend
 27 his complaint once “as a matter of course” within twenty-one days after service of that motion. Fed. R. Civ. P.
 15(a)(1)(B)); see also Ramirez v. Cnty. of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) (finding plaintiff had
 28 right under Rule 15(a)(1)(B) to amend once within twenty-one days after service of defendants’ motion to dismiss
 under Rules 12(b)(6) and 12(e)). Thus, any amended complaint filed as a matter of course under Rule 15(a)(1) was
 required to be filed by August 18, 2021.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's September 29, 2021 filing (ECF No. 25), construed as a motion for leave to amend, is GRANTED as unopposed; and
2. This action shall proceed on Plaintiff's first amended complaint filed September 29, 2021 (ECF No. 25).³

IT IS SO ORDERED.

Dated: **October 13, 2021**


UNITED STATES MAGISTRATE JUDGE

³ The Court makes no other findings or order concerning the motion to dismiss filed October 11, 2021, by Defendants William Westin, Edward Miliam and Joe Banuelos (ECF No. 27), nor the fact the first amended complaint seeks to add additional parties, and the motion to dismiss will be addressed by separate order by the District Judge.